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Foreword

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Forward

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> "*We need to become cognizant of the varieties of human perception, of the gap between our understanding of the physical world and our understanding of ourselves and of the gap between our behavior and our needs. If we can do that, we will have taken an encouraging first step toward closing those gaps, because the acknowledgement of ignorance is the beginning of wisdom."*
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> *J. William Fulbright*.[1]

This twelfth issue of the *San Diego International Law Journal* is composed of articles which examine a broad range of contemporary legal issues of international and foreign significance. As J. William Fulbright suggests, "perceive[ing] the world as others see it" through educational and cultural exchanges cultivates "perceptions and perspectives that transcend national boundaries."[2] This applies equally to the study of international and foreign law which benefits greatly from the identification of viewpoints from different national environments that shed light on the variety approaches available to analyze and

* Editor-in-Chief, 12 SAN DIEGO INT'L L.J. (2010), J.D. Candidate 2011, University of San Diego School of Law, M.A. Political Science, California State University, Fullerton, B.A. Political Science and Criminal Justice, California State University, Fullerton. I would like to thank the Editorial Board and Members of the *San Diego International Law Journal* for their outstanding contributions to the success and completion of this volume. I would also like to thank Brigid Bennett for her expertise and dedication in publishing this volume. Finally, I would like to thank my family—my wife Valerie and my son Alexander—for their love and support throughout the entire publication process.

1. J. WILLIAM FULBRIGHT, ARROGANCE OF POWER 176 (1966).
2. *Id.* at 177.

examine modern legal issues.[3] The articles within this volume add to this continuous goal of expanding the perceptions and perspectives available.

Gregory M. Stein sets out to explain the rapid modernization and development of China's real estate market during the past three decades in his article, *Private and Public Construction in Modern China*. Specifically, Stein seeks to explain how the real estate market and professionals in China have been functioning when the nation was without formal real estate law for most of this period of development. His examination focuses on China's public and private construction, analyzing the commercial construction process, the sale of residential units, and the construction of infrastructure in China.

In her article, *The Exclusionary Rule in Immigration Proceedings: Where it Was, Where it Is, Where it May be Going*, Irene Scharf examines the treatment of the Fourth Amendment's exclusionary rule in immigration proceedings. Scharf begins her article by analyzing the jurisprudential history governing the application of the exclusionary rule in immigration proceedings and then analyzes judicial responses to violations of regulations governing the apprehension and detention of suspected immigration law violators. She then uses recent immigration court decisions to illustrate the disparities among the federal circuits in applying the exclusionary rule to highlight the Fourth Amendment's unpredictability in immigration proceedings. Scharf concludes by arguing for the unification of Fourth Amendment jurisprudence—that the application of the exclusionary rule in immigration proceedings should mirror its application in criminal proceedings.

Michael B. Bixby traces the use and enforcement of the Foreign Corrupt Practices Act (FCPA) from its enactment to the present in his article, *The Lion Awakens: The Foreign Corrupt Practices Act—1977 to 2010*. Bixby begins his article by examining the history, purpose, and provisions of the FCPA, including the 1988 and 1998 amendments which expanded the scope of the law. He then provides a historical analysis of the enforcement of the FCPA, contrasting the act's underutilization during the first twenty-five years with the sharp increase in enforcement during recent years. Bixby proceeds to examine the recent enforcement trends and analyzes the different variables which have influenced the enforcement changes. He concludes his article by encouraging business leaders and legal scholars to continue to observe for new legal developments, both domestically and abroad, aimed at eliminating corruption and bribery from international business transactions.

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3. *See id.* at 176–77.

In his article, *"Don't Mess with Moscow"—Legal Aspects of the 2008 Caucasus Conflict*, Hannes Hofmeister examines the legality of both Georgia and Russia's actions according to international law. To accomplish this task, Hofmeister first provides a brief chronological history of essential events that led to the outbreak of the conflict. He then analyzes the legality of Georgia's military action under Article 2(4) of the U.N. Charter which provides a broad prohibition on the use of force. His analysis continues by determining if Georgia's actions could be justified under an exception to this law. Hofmeister then applies the same legal analysis to Russia's actions. His article concludes by finding that both Georgia and Russia's actions were in violation of international law despite the fact each country's constitution accords rules of international law the highest status within their legal hierarchy.

Manoj Mate, in his article, *Two Paths to Judicial Power: The Basic Structure Doctrine and Public Interest Litigation in Comparative Perspective*, analyzes two critical moments which have empowered the Supreme Court of India—the assertion of the basic structure doctrine and the development of Public Interest Litigation. Mate provides that these two critical moments exemplify two types of moments and paths that capture distinct aspects of the role of courts in different polities—"constitutional entrenchment" and "judicialization of governance." He goes on to differentiate between these two moments, concluding the judicialization of governance provides a more dynamic path to judicial power which enhances the legitimacy of courts.

In his comment, *The Vulnerability of Subsea Infrastructure to Underwater Attack: Legal Shortcomings and the Way Forward*, Laurence Reza Wrathall examines the vulnerability of submarine pipelines and cables to underwater attacks beyond territorial waters. Wrathall begins his comment by illustrating the importance of submarine pipelines and cables to our nation's energy and communications infrastructure, and the susceptibility of these undersea systems to attack. He then identifies the current legal shortcomings in the protection of submarine pipelines and cables in both domestic and international law. Wrathall concludes by suggesting a number of proposals and recommendations for the United States to adopt to remedy these legal shortcomings in order to provide the protection necessary from attacks on these undersea systems.

Finally, Brian Friederich examines the legal shortcomings of the Hague Convention on Taking Evidence Abroad in his comment, *Reinforcing the Hague Convention on Taking Evidence Abroad After*

Blocking Statutes, Data Privacy Directives, and Aérospatiale. Friederich first provides a historical analysis of the problems with gathering evidence abroad prior to the adoption of the Hague Convention, and how the convention resolved these problems. He then goes on to discuss European blocking and data privacy statutes which pose problems to current international discovery request, as well as the U.S. Supreme Court's holding that the Hague Convention is optional in international discovery. Friederich concludes by analyzing numerous problems with the current state of international discovery and possible solutions, recommending specific modifications to the Hague Convention.